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Bryan S. Redding
Suite 800
8888 Keystone Crossing Blvd
Indianapolis, IN 46240

EXAMINER

PAYNE, SHARON E

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/779,996

Applicant(s)

STEINBERG, BENJAMIN H.

Examiner

Sharon E. Payne

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 3, 4 and 6 is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☒ Claim(s) 2 and 5 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0204.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 18 February 2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the second-to-last patent number is incorrect. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1). (All other references were considered.)

Claim Objections

2. Claims 2 and 8 are objected to because of the following informalities: the word "long" is a term of degree that is not defined in the specification or claims, and it should not be used. Appropriate correction is required.

3. Claims 5 and 11 are objected to because of the following informalities: the word "many" is a term of degree that is not defined in the specification or claims, and it should not be used. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ladyjensky (U.S. Patent 5,488,544).

Regarding claim 7, Ladyjensky discloses a translucent container with two chambers (column 8 in lines 22-30 and Fig. 1), whereby each chamber contains at least one chemical product which reacts with the other chemical to produce a chemiluminescent reaction (abstract) and a means in which to allow for a graduated introduction of one of the chemicals from one chamber to the other (column 4, lines 13-26).

Concerning claim 8, Ladyjensky discloses the container being a long cylindrical shape (Figs. 1, 4, 5 and 6).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ladyjensky (U.S. Patent 5,488,544) in view of Thomas et al. (UK Patent Application 2,013,704 A).

Regarding claim 9, Ladyjensky does not specifically disclose a container in such a shape that it could be placed on or near a hazard cone or similar device. Thomas et al. discloses the

container being in such a shape that it could be place on or near a hazard cone or similar device (page 1, lines 5-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the configuration of Thomas et al. with the apparatus of Ladyjensky to be able to use the apparatus in an emergency situation. See page 1, lines 5-35, of Thomas et al.

Concerning claim 10, Ladyjensky does not specifically disclose a colored exterior of the container. Thomas et al. discloses the container having an exterior that is colored or imprinted to increase the effectiveness of the chemiluminescent light produced or to provide entertainment or novelty (page 3, lines 93-95).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the colored tube of Thomas et al. in the apparatus of Ladyjensky to determine the color of the light emission, thus creating an aesthetically pleasing effect. See page 3, lines 93-95, of Thomas et al.

Regarding claim 12, Ladyjensky does not specifically disclose varying the chemicals to change the color of the light produced by the chemiluminescent reaction. Thomas et al. discloses varying the chemicals to change the color of the light produced by the chemiluminescent reaction (page 3, lines 90-95).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the chemicals as shown in Thomas et al. in the apparatus of Ladyjensky to produce a desired color for signaling. See page 3, lines 90-121, of Thomas et al.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ladyjensky in view of Neylan et al. (U.S. Patent 3,884,560).

Regarding claim 11, Ladyjensky does not specifically disclose a container of sufficient size to allow for an extended chemiluminescent reaction lasting many hours long. Neylan et al. discloses a container of sufficient size to allow for an extended chemiluminescent reaction lasting many hours long (column 1, lines 10-25).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the configuration of Neylan et al. in the apparatus of Ladyjensky to extend the reaction time, thus producing more light. See column 1, lines 10-25, of Neylan et al.

Allowable Subject Matter

9. Claims 1, 3, 4 and 6 are allowed.

10. Claim 2 and 5 would be allowable if rewritten to overcome the objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter. The prior art fails to disclose a chemiluminescent device with a means whereby the chemicals can be removed from the container and new chemicals introduced, separately, into the two chambers to allow for further chemiluminescent reactions as recited in claim 1.


Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (571) 272-2379. The examiner can normally be reached on regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sep


Sharon Payne
Patent Examiner
Technology Center 2800